IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1053 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DECD. CHIMANLAL AMARCHAND MEHTA

Versus

CHANDRESH RAMLAL BHUPTANI

Appearance:

MRS NISHA M PARIKH for Petitioner Nos. 1-1/3

MR NAVALDAN R LANGA for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/11/2002

ORAL JUDGEMENT

Rule. Mr.Langa, learned Advocate, waives service of rule on behalf of the respondent.

With the consent of the parties, the matter is taken up for hearing today.

One Chimanlal Amarchand Mehta instituted a suit, being Regular Civil Suit No.1084 of 1989, in the Court of Civil Judge (Senior Division), at Rajkot. The said suit is filed against the present respondent. During the pendency of the present suit, the original plaintiff died on 8.6.1994. It seems that, originally, the heirs gave an application at Exhibit 104 on 27.6.1994, along with the vakalatnama, at Exhibit 105. The said fact has been mentioned by the learned trial Judge in the order at page 2. However, it seems that the concerned Advocate, one Mr.Kotecha, did not take proper care by filing appropriate application, by way of an application for bringing them on record as heirs of the deceased original plaintiff. The fact remains that the original heirs gave an application, disclosing the names of the heirs, along with the vakalatnama of such heirs. The said Pursis, disclosing the heirs of the deceased, was given within a short time and within limitation, for bringing heirs on record. It seems that the concerned Advocate therafter did not bother to file necessary application and, subsequently, an application was filed before the trial court, praying that, at the initial stage, appropriate application was not filed for bringing the said heirs on record of the suit as heirs of the original deceased plaintiff. An application was, therefore, submitted for bringing the heirs on record in the suit. There is no such application on record. In any case, considering the order of the trial court, it is clear that the heirs of the original plaintiff took reasonable care by informing their Advocate that they are the heirs of the original plaintiff and such information was given within time as per the Pursis Exhibit 104 and the said fact is stated by the trial court even in the order. Under these circumstances, simply because the Advocate of the plaintiff was negligent in not preferring necessary application, in my view, this is not a case in which the present petitioner should be subjected to depriving their right to continue the said proceedings. Unfortunately, the way in which the Advocate has conducted the matter for the plaintiff should be deprecated and he has not taken any care, but for the fault of the Advocate, the parties should not be allowed to suffer.

Considering the facts and circumstances of the case and considering the fact that the names of the heirs were already disclosed by Pursis Exhibit 104 within the limitation period, in my view, it would be just and proper to set aside the abatement and to permit the heirs of the deceased plaintiff to be brought on record as heirs of the original plaintiff. Under these

circumstances, the revision is allowed. The impugned order of the trial Judge is set aside. The present petitioners are permitted to be joined as heirs of the deceased original plaintiff and the abatement is accordingly set aside. The aforesaid suit, being Regular Civil Suit No.1084 of 1989, is restored on the file by setting aside the abatement and the present petitioners are permitted to continue the proceedings as heirs of the deceased original plaintiff.

Since the suit is of 1989, the trial court is directed to dispose of the suit expeditiously, preferably on or before 30th June, 2003.

Rule is made absolute accordingly, with no order as to costs.

27th November, 2002 (P.B. Majmudar, J.)

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(apj)